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Human Rights Committee

Concluding observations on the seventh periodic report of Ukraine

Addendum

Information received from Ukraine on follow-up to the concluding observations*

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Information provided on follow-up to the Human Rights Committee's concluding observations on the seventh periodic report of Ukraine under the International Covenant on Civil and Political Rights

Paragraph 6

1. The new Code of Criminal Procedure of Ukraine, which entered into force on 20 November 2012, sets out the modalities for the conduct of criminal judicial proceedings in the territory of Ukraine.

2. The new Code, which received a positive evaluation from Council of Europe experts, was drafted on the basis of generally accepted international democratic standards of criminal justice and is intended to set the modalities for the conduct of criminal justice based on respect for human rights and freedoms; uphold the principles of the adversarial system and the equality of the prosecution and the defence in a criminal case; strengthen and improve criminal justice procedures; and enhance the efficiency of the criminal justice system.

3. The procedural and adversarial equality of the parties in a criminal case is achieved by giving them equal rights in gathering evidence and guaranteeing them an impartial trial to establish whether they are guilty of having committed a criminal offence. The court, as an independent and objective participant in the criminal process, has the right to base its conclusions exclusively on the testimonies received from the parties involved in the court hearing and is thus able to avoid prosecuting innocent persons.

4. Suspects and defendants enjoy the right to legal counsel, which is, if necessary, provided free of charge by a professional lawyer. Any violation of an individual's right of defence under the Code of Criminal Procedure constitutes a violation of human rights.

5. The right of defence is guaranteed under articles 29, third paragraph, and 62, second paragraph, of the Constitution and under articles 20 (1), 42 (3)(3) and 49 (1)(2) of the Code of Criminal Procedure. The Code provides for the right of a suspect to receive free legal assistance, paid for by the State under the circumstances provided for in the Code or in the Free Legal Assistance Act, including the lack of means to pay for such assistance.

6. Furthermore, article 5(8) of the Police Act sets out police obligations with regard to ensuring that a defendant is able to receive legal assistance as soon as he or she is taken into custody, including free legal assistance in accordance with the Free Legal Assistance Act.

7. Pursuant to article 14 (1)(5) of the Free Legal Assistance Act, any person taken into custody on suspicion of committing an offence has the right to free legal assistance. Pursuant to article 213(4) of the Code of Criminal Procedure, an official who carries out an arrest is required to notify immediately the agency or institution authorized by law to provide free legal assistance. The same official must also notify that agency or institution in the event that the defence counsel fails to appear within the time established by law.

8. Cabinet of Ministers Decision No. 1363, issued on 28 December 2011, stipulated the modalities for informing legal aid centres providing secondary legal assistance about the circumstances of a given suspect's detention. The Decision sets out the general requirements and mechanisms for informing such centres about the circumstances of a suspect's detention by the administrative authorities, remand in custody by law enforcement bodies or pretrial detention.

9. The system has been improved with the introduction of preventive measures such as house arrest. Remand in custody is only used as an exceptional precautionary measure where the procurator has evidence that none of the less stringent options available will be effective in ensuring the proper conduct of the suspect or accused.

10. Reliable judicial oversight serves as a further guarantee of proper preliminary investigation at the pretrial stage and is undertaken by an examining magistrate, who has exclusive competence to take decisions on the preventive measures to be taken and their duration, undercover investigations, imposition of restrictions on the constitutional rights of individuals, seizure of property, use of force and other measures.

11. The criminal justice system is also intended to protect persons who have been victims of offences or have suffered as the result of an unlawful decision, action or inaction by law enforcement authorities or the courts. The new Code of Criminal Procedure strengthens the institution of redress (compensation) for harm incurred during criminal proceedings or civil action (chapter 9 of the Code). Pursuant to article 127, the victim, community or State has the right, at any stage during criminal proceedings, to seek redress for harm caused by a criminal offence. Furthermore, article 130 provides for redress (compensation) for parties injured by an unlawful decision, action or inaction of law enforcement authorities or the courts. Several provisions of the Code of Criminal Procedure show the importance of this institution and its significance in the criminal process. These provide for the right to bring a civil action during a criminal case; the duty of the authorities conducting the preliminary investigation to take measures to facilitate such proceedings where there is sufficient evidence that harm has been caused; and the duty of the prosecuting authority to facilitate and support a civil claim for damages incurred as a result of the criminal offence, if this is required for the protection of the interests of the State or the public.

12. Pursuant to the provisions of article 1(1)(1) of the Act on redress for harm caused by the unlawful actions of authorities conducting police operations, pretrial investigation bodies, the Prosecution Service or the courts, redress may be sought for any harm caused to a person by unlawful conviction, unlawful accusation of having committed a criminal offence, illegal detention or remand in custody, illegal search or seizure during criminal proceedings, unlawful seizure of property, unlawful suspension from work (professional occupation) or other procedural activities that restrict the person's rights.

13. The implementation by the law enforcement authorities of the Code of Criminal Procedure is currently being monitored and judicial practice is being analysed in order that a consistent approach to the implementation of the new provisions of criminal procedural law may be developed in the future.

Paragraph 10

14. Article 24 of the Constitution of Ukraine prohibits direct or indirect restrictions on a person's rights on the grounds of race, colour, political, religious or other beliefs, sex, ethnic or social origin, property status or any other factor.

15. The Act on the Principles of Preventing and Combating Discrimination in Ukraine, which entered into force on 4 October 2014, was adopted to build on these provisions, define the organizational and legal framework for preventing and countering discrimination and guarantee equal opportunities for the enjoyment of human rights and freedoms in Ukraine. As originally worded, the Act had a number of shortcomings, which were pointed out in the concluding observations of the Human Rights Committee, issued on 22 August 2013 (CCPR/C/UKR/CO/7, para. 8), and the Committee on Economic, Social and Cultural Rights, issued on 13 June 2014 (E/C.12/UKR/CO/16, para. 7).

16. In order to eliminate these shortcomings, the Ministry of Justice, in close cooperation with the parliamentary Human Rights Commissioner, drafted the Act amending certain legislative acts of Ukraine on preventing and combating discrimination, which was submitted by the Cabinet of Ministers to the Verkhovna Rada for consideration on 27 March 2014. The Act entered into force on 30 May 2014 and has significantly improved national anti-discrimination legislation.

17. Article 5 of the Act prohibits the following forms of discrimination:

1. Direct discrimination;
2. Indirect discrimination;
3. Incitement to discrimination;
4. Aiding and abetting discrimination; and
5. Infringement of rights.

18. The types of discrimination prohibited under the Act and their definitions, set out in article 1, correspond with international best practice, as interpreted by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the jurisprudence of the European Court of Human Rights, and with European Council directives 2000/78/EC and 2000/43/EC.

19. Furthermore, article 14 of the Act also prohibits the victimization of a person who has availed him- or herself of the right to submit a complaint about discrimination within the body designated by the Act to be responsible for preventing and countering discrimination and has suffered negative consequences as a result. The scope of the Act is quite broad and generally meets the requirements laid out in, among others, articles 2 and 26 of the International Covenant on Civil and Political Rights, article 2 of the International Covenant on Economic, Social and Cultural Rights, article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and article 1 of Protocol No. 12 thereto. The Act covers a comprehensive range of social issues. It also pertains to relations between legal entities under both public and private law, and to relations between individuals (article 4 of the Act).

20. Pursuant to articles 14 to 16 of the Act, a person who is the victim of discrimination may appeal for the defence of his or her rights to the court, to the Human Rights Commissioner, or to the national or local authorities, to seek compensation for material or moral damage. Civil, administrative and criminal liability are provided for in respect of violations of the Act.

21. The Act amending certain legislative acts of Ukraine on preventing and combating discrimination introduced amendments to article 60 of the Code of Civil Procedure to take account of European jurisprudence, such as the European Court of Human Rights decision in the cases of *Nachova and Others v. Bulgaria* and *Stoica v. Romania*, and European Council directives 2000/78 and 2000/43, with regard to the principle of sharing the burden of proof in discrimination cases. This article of the Code stipulates that "in discrimination cases, the complainant shall provide factual information proving that discrimination has taken place. If such information is submitted, the defendant shall be required to disprove it."

22. Criminal liability for violating a person's right to equal treatment on the grounds of race, ethnicity or religion is provided for in article 161 of the Criminal Code.

23. According to article 161 (1) of the Code, deliberate acts intended to incite ethnic, racial or religious hostility or hatred, disparage national honour and dignity or insult a person in connection with his or her religious beliefs, or the direct or indirect restriction of rights or the granting of direct or indirect privileges on the grounds of race, colour, political, religious or other beliefs, sex, disability, ethnic or social background, property status, place of residence, language or other characteristics are punishable by a fine of up to 50 times the non-taxable minimum income, or correctional labour for a period of up to 2 years, or deprivation of liberty for a period of up to 5 years with or without restrictions on the right to perform certain functions or engage in certain activities for a period of up to 3 years.

24. Article 161 (2) provides for punishment for the same acts when accompanied by violence, fraud or threats or when committed by officials, in the form of correctional labour for a period of up to 2 years or deprivation of liberty for up to 5 years. Pursuant to article 161 (3), the acts provided for in article 161 (1) and (2), if committed by an organized group or resulting in death or other serious consequences, incur the penalty of deprivation of liberty for a period of 2 to 5 years.

25. With a view to improving the protection of the rights of transsexual persons, Ministry of Health Order No. 60 of 3 February 2011 on the improvement of medical care for persons requiring a change or correction of sex will be amended to take account of the concerns raised in paragraph 10 of the concluding observations.

26. The draft laws on the prohibition of propaganda aimed at children to promote homosexual relations (No. 1155 of 24 December 2012) and on amendments to certain legislative acts of Ukraine regarding protection of children's rights in a safe information

environment (No. 0945 of 12 December 2012) have been withdrawn and will be given no further consideration.

Paragraph 15

27. Pursuant to article 28 of the Constitution, everyone has the right to have his or her dignity respected. No one may be subjected to torture, cruel, inhuman or degrading treatment or punishment.

28. Moreover, article 127 (1) of the Criminal Code provides for criminal liability for torture, which is defined as the deliberate infliction of severe physical pain or physical or moral suffering by beating or tormenting a person or by engaging in other acts of violence with the aim of forcing the victim or another individual to do something against his or her will, including obtaining information, evidence or a confession, punishing the person for acts that he or she has committed or is suspected of having committed, or to intimidate that person or others.

29. It should also be noted that article 365(1) of the Criminal Code establishes criminal liability for the abuse of power or official authority, which means the deliberate commission by a law enforcement official of an act that clearly exceeds the scope of his or her rights and authority, if this act has caused substantial harm to the rights and interests of the individual, or to the interests of the State or society or of legal entities, as protected by law. Paragraph 2 of the article sets out the criminal liability where such actions are accompanied by the use or threat of violence, the use of a weapon or a special instrument, or the infliction of pain or humiliation on the victim, even if such actions do not constitute torture.

30. In line with article 214(1) of the Code of Criminal Procedure, an investigator or procurator is required, without delay, and in any case no later than 24 hours after a claim or notification of an offence has been made, or after the investigator or procurator has independently identified, from any source, circumstances that may indicate that a criminal offence has been committed, to enter the relevant information into the general register of pretrial investigations and to begin the investigation.

31. It should also be noted that, in line with article 12(2) of the Code, an individual detained on suspicion of or charged with having committed a criminal offence, or otherwise deprived of his or her liberty, must be brought before an examining magistrate as soon as possible, for a decision on the legality and validity of his or her detention or other form of deprivation of liberty and on his or her continued detention. If a reasoned justification of the detention is not provided within 72 hours of the person's arrest, he or she must be released immediately.

32. Any individual detained or otherwise deprived of his or her liberty for longer than the period set out in the Code must be released immediately.

33. Pursuant to article 206 of the Code, any examining magistrate attached to the court within the territorial jurisdiction of which the detained person is located has the right to issue a decision requiring any State body or official to ensure that the rights of the detained person are upheld.

34. Moreover, if the examining magistrate receives information indicating that an individual is in custody within the territorial jurisdiction of the court without a court decision having been issued, or has not been released from custody after bail has been paid, the examining magistrate is required to order that the detained person be brought immediately before the examining magistrate for clarification of the grounds of the deprivation of liberty.

35. If a valid judicial decision is found not to have been issued, or no other legal reasons are found for depriving the detained person of his or her liberty, the examining magistrate must order that person's release.

36. If the procurator or investigator lodges a petition for the application of other preventive measures before the individual is brought before the examining magistrate, the latter must consider that petition without delay. Regardless of whether such a petition is

presented, however, the examining magistrate must release the individual if there is no legal basis for his or her detention without a decision by an examining magistrate or a court, if the maximum period of remand in custody is exceeded or if there is a delay in bringing the individual before the court.

37. If, during the course of the judicial hearing, an individual reports the use of force during arrest or detention by State authorities or in a State-run institution authorized by law to remand persons in custody, the examining magistrate is required to put the complaint on record, or obtain a written complaint from the individual, and order an immediate forensic medical examination; order the relevant pretrial investigation authority to investigate the facts set out in the complaint; and take the necessary measures to ensure the individual's safety in accordance with the law.

38. The examining magistrate is obliged to follow the procedure described above, regardless of whether a complaint has been filed by an individual, if the individual's outward appearance or physical state, or any other circumstance known to the examining magistrate, leads the latter to suspect that the legal requirements governing arrest or remand in custody by State authorities or in a State-run institution may have been violated.

39. Redress for harm sustained as a result of unlawful arrest or remand in custody, or unlawful administrative arrest, is available under the Act relating to compensation for harm caused to a citizen by the unlawful actions of bodies conducting police operations, pretrial investigation authorities, procurators or the courts.

40. Pursuant to article 28 (1) of the Code of Criminal Procedure, criminal proceedings against a minor remanded in custody must be instituted without delay and the case must be heard by the court as a matter of priority.

41. Furthermore, a suspect or accused person must be granted his or her right to legal assistance, which, if necessary, must be provided free of charge by professional lawyers. Moreover, pursuant to the provisions of the Code of Criminal Procedure, the violation of the right to legal assistance is considered a fundamental violation of human rights.

42. The State Prison Service works to bring together State and non-State sector initiatives to strengthen guarantees of human rights protection. To that end, it constantly updates its procedures to make them effective in improving the work of the bodies and institutions under its management.

43. The Service considers its work on the prevention of torture and ill-treatment in prisons to be the top priority in its efforts to address the needs of all convicts and detainees, as provided for in the Code of Criminal Procedure, the Pretrial Detention Act and other legislation.

44. Recently, particular attention has been paid to enhancing the mechanisms by which potential victims of inappropriate conduct can register complaints and to developing fitting responses. The Service has concluded that such an organizational or legal instrument must adhere strictly to the principles of independence and objectivity, effectiveness, adequate involvement of the victim and openness to public monitoring.

45. In order to ensure this, until December 2013 the Service participated actively in international projects on preventive mechanisms, under the aegis of the Council of Europe.

46. In the context of the European Union and Council of Europe project on reinforcing the fight against ill-treatment and impunity (Council of Europe Plan of Action for Ukraine 2011-2014), discussions were held on 13 December 2013 concerning the recommendations by a Council of Europe consultant for assessing the effectiveness of the complaints mechanism by which detainees can report ill-treatment in the prison system. The recommendations were the subject of public consultations between 16 May and 16 June 2014.

47. It is planned to renew cooperation with the Council of Europe in 2015 on the implementation of the recommendations on the development of organizational and legal instruments. On 30 September 2014, a meeting was held with a representative of the Action against Crime Department of the Criminal Law Cooperation Unit of the Council of Europe Directorate General of Human Rights and Rule of Law. It is proposed that the practical

development of the relevant organizational and legal instrument will be carried out at the State Prison Service's Oleksiivsk correctional colony (No. 25) in Kharkiv province.

48. The issue of improving the mechanism for considering complaints filed by convicts and detainees regarding inappropriate conduct by staff is constantly monitored by the country's Commissioner for the European Court of Human Rights, in accordance with Order No. 25007/1/1-14 of the Cabinet of Ministers, issued on 14 July 2014.

49. On 25 June 2014, a meeting was held with the Organization for Security and Cooperation in Europe (OSCE) Project Coordinator in Ukraine, with whom joint activities will be conducted to increase the effectiveness of cooperation between the State Prison Service and civil society entities and raise the level of professionalism of prison staff when cooperating with the media.

50. The management of the State Prison Service, taking account of the recent conclusion of the Ukraine-European Union Association Agreement, supports the implementation of international standards on the human dimension.

51. Among the international legal documents that enshrine the generally accepted standards with regard to human rights and fundamental freedoms in the penitentiary context are the Universal Declaration of Human Rights (1948), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the International Covenant on Civil and Political Rights (1966), the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955), the European Prison Rules (most recent edition, 2006), the United Nations and European conventions against torture (which Ukraine ratified in 1987 and 1997 respectively), the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) and the United Nations Code of Conduct for Law Enforcement Officials (1979). The State Prison Service always keeps in mind the relevant resolutions of the Council of Europe and other international documents.

52. Recommendations and comments by the European Committee for the Prevention of Torture (CPT) are implemented in the interests of ensuring respect for the rights and freedoms of persons in detention: CPT site inspections took place on 8-24 February 1998; 14-23 July 1999; 10-26 September 2000; 24 November-6 December 2002; 9-21 October 2005; 5-10 December 2007; 9-21 September 2009; 29 November-6 December 2011; 1-10 December 2012; 9-21 October 2013; 18-24 February 2014; and 9-16 September 2014. Implementation of these recommendations is considered obligatory in Ukraine. During its site visits between 1998 and 2014, CPT visited several State Prison Service institutions in the autonomous republic of Crimea and in Vinnytsya, Dnipropetrovsk, Donetsk, Zhytomyr, Kyiv, Luhansk, Kharkiv, Odesa and Poltava provinces.

53. Cooperation with CPT is conducted transparently and relevant information is posted on the State Prison Service website, which also gives the necessary links to relevant parts of the Ministry of Justice website and is fully aligned with the policies of the Minister of Justice, Pavel Petrenko. Six items were posted online on 7 and 16 May 2014.

54. In all cases, inspection entities have drawn up the list of institutions to be visited, without interference from the national penitentiary department, as required under the conventions listed above and the protocols thereto. Ukraine thereby meets the standards set in international law for the prevention of inappropriate conduct.

55. Public monitoring of penitentiary institutions is enshrined in article 25 of the Code of Criminal Procedure and the Regulations on local State administration monitoring commissions, as set out in Decision No. 429 of the Cabinet of Ministers, issued on 1 April 2004. Decision No. 996 of the Cabinet of Ministers on ensuring public involvement in the development and implementation of State policy, which was issued on 3 November 2010, is currently being implemented.

56. The Public Council set up by the State Prison Service to conduct public monitoring of the Service's bodies and institutions, in addition to its other functions, has been operational since 1 April 2015. Although the procedure for establishing the composition of the Council is outside the Service's remit, the Service actively contributes to the Council's work.

57. The State Prison Service facilitates improvements to the work of national and inter-agency mechanisms against torture, in order to strengthen the guaranteed protection of human rights. On 19 June 2014, a web page relating to this was added to the prison service website:

http://www.kvs.gov.ua/peniten/control/main/uk/publish/category/643789,

http://www.kvs.gov.ua/peniten/control/main/uk/publish/category/643790.

58. On 2 October 2012, the powers of the parliamentary Human Rights Commissioner were broadened. In accordance with the new legislation, staff of the Department for the Implementation of the National Preventive Mechanism, which operates under the Office of the Ombudsman, are granted unfettered access to State Prison Service prisons and detention centres.

59. To strengthen cooperation with the Ombudsman on the issues mentioned above, the State Prison Service issued order No. 810 on 30 November 2010, in accordance with which the management of local State Prison Service bodies are obliged to cooperate with staff of the Department for the Implementation of the National Preventive Mechanism conducting monitoring visits to prisons and remand centres.

60. On 27 November 2013, the State Prison Service adopted a plan of additional measures to strengthen the guarantees for the protection of the rights and freedoms of persons in detention in State Prison Service institutions and to prevent torture and inhuman or degrading treatment or punishment. The plan contains a list of measures aimed at strengthening on a permanent basis the guarantees of the protection of the rights and freedoms of persons in detention in State Prison Service institutions.

61. On 18 April 2014, Order No. 670/5 of the Ministry of Justice established the Commission for State Policy on Criminal Enforcement, which met on 2 June and 4 September 2014. The Commission comprises five mobile groups that carry out inspections of penitentiary facilities. Inspections have been conducted in nine institutions to date: the Kyiv, Odesa and Kharkiv remand centres, the Zakarpattia prison (No. 9) and the Borispol (No. 119), Strizhavka (No. 81), Politsk (No. 76) and Oleksiivsk (No. 25) correctional facilities in Kyiv, Vinnytsya, Rivne and Kharkiv provinces and the Melitopol young offenders' institution in Zaporizhzhya province.

62. Representatives of civil society and the Public Council established under the State Prison Service, including persons who are opposed to the activities of State Prison Service bodies and institutions, are all actively engaged in this work.

63. At its second meeting, on 4 September 2014, the Commission for State Policy on Criminal Enforcement decided that the mobile inspection groups should be led by members of the public or representatives of the Ministry of Justice.

64. On 16 May 2014, the board of the State Prison Service made a decision on the candidates for management positions in Service bodies and institutions and on the consideration by the staff commission of information relating to their appointment or promotion, taking into consideration the comments contained in CPT reports.

65. On 19 December 2012, the board adopted the Code of Ethics and Professional Conduct for State Prison Service staff, which contains the provisions of the European Code of Ethics for Prison Staff, adopted by the Committee of Ministers of the Council of Europe on 12 July 2012. This document has been brought to the attention of all staff working in State Prison Service bodies and institutions.

66. State Prison Service staff also take account of the provisions of national legislation, ranging from the Constitution to specific legislation, such as the Penal Enforcement Code (2003), the Pretrial Detention Act (1993) and other generally accepted standards for the protection of human rights and freedoms.

67. The State Prison Service has the relevant authority and takes all the necessary measures provided for in national legislation to ensure full respect for the rights and freedoms of persons remanded in custody.

68. The Service views the integrated, systematic, competent and constructive work of all the international actors and the Ukrainian State and non-State sectors as a guarantee that the procedures governing the serving and enforcing of criminal penalties and remand in custody will be brought into line with international standards.

69. Furthermore, with a view to upgrading procurators' professionalism and investigative skills, training events have been held on the subject of working with prisoners. On 16-17 March 2015, for example, a two-day training seminar was held, entitled "Difficult issues relating to prosecutorial supervision of compliance with the law in the implementation of court decisions in criminal cases and other coercive measures".

70. The seminar was attended by provincial deputy procurators responsible for ensuring that court decisions in criminal cases and other coercive measures are executed in full compliance with the law and also by the managers of the relevant divisions of provincial procurator's offices from all regions of Ukraine, staff of the Procurator General's Office and senior lecturers at the National Procurators' Academy.

71. Participants in the discussion on the difficult issue of guaranteeing the constitutional rights of citizens included the acting Commissioner for the European Court of Human Rights, a representative of the Office of the parliamentary Human Rights Commissioner, the acting Director of the Amnesty International office in Ukraine and representatives of other civil society associations and human rights organizations.

72. The seminar included discussions on issues related to the jurisprudence of the European Court of Human Rights, with reference to the provisions of recent domestic legislation, including the Procurator's Office Act of 14 October 2014 and the Probation Act of 5 February 2015, and the requirements of the Parliamentary Human Rights Commissioner Act. There was a particular focus on the need to react to each and every case of ill-treatment of prisoners.

73. With regard to the question of amending the provisions of the Code of Criminal Procedure on the mandatory filming of questioning, we would draw the Committee's attention to article 107 of the Code, relating to the use of technology to document criminal proceedings, which provides for the possibility of video recording the questioning of persons involved in criminal cases.

74. The decision as to whether to record proceedings using technical devices during the pretrial investigation phase, including questioning by the examining magistrate, is taken by the person responsible for the proceedings. If requested by the participants in the proceedings, recording using technical devices is mandatory.

75. It should be noted that, under article 42 (3)(11) of the Code of Criminal Procedure, a suspect or accused person has the right to use a technical device to record any proceedings in which he or she is involved, in line with the provisions of the Code. The only exceptions are cases where an investigating official, procurator, examining magistrate or the court has the right to hand down a reasoned decision prohibiting the use of technical means to record the proceedings, in whole or in part, in order to maintain the confidentiality of information that is protected by law or concerns the private life of the individual.

76. Article 224(5) of the Code also provides for the possibility of photographing or making audio or video recordings of proceedings.

77. Pursuant to the provisions of article 103 of the Penalties Enforcement Code, prison authorities may use audiovisual, electronic and other technology to prevent escapes or other offences constituting violations of the regulations governing the serving of a sentence, or to obtain other essential information about inmates' behaviour. The use of this technology is successful in practice. The list of the technical devices used for surveillance and monitoring and the procedure for their use are set out in Ministry of Justice legislation.

78. In view of the above, any further amendment of the Code of Criminal Procedure is considered unnecessary.

Paragraph 17

79. The Right to a Fair Trial Act was adopted on 12 February 2015. The Act was drafted by the Judicial Reform Council, which was set up by the President of Ukraine as a presidential consultative and advisory body for reforming, strengthening and guaranteeing the independence of the judicial system. The Council has improved the situation regarding the procedures and objective criteria for the promotion and dismissal of judges.

80. The provisions of the Right to a Fair Trial Act are intended to establish transparent and objective procedures for the appointment of judges and for their dismissal. The Act also establishes judges' disciplinary responsibility, setting out the precise basis for that responsibility and the various kinds of disciplinary proceedings.

81. The Act sets out the new approaches to be taken, in line with international standards on the independence of the judiciary, in the composition of the High Judicial Qualification Commission and the High Council of Justice, the aim being to revitalize the work of these bodies and ensure that they function smoothly.

82. Furthermore, the provisions of the Act guarantee access to justice, including the possibility of applying directly to the Supreme Court to appeal against judicial decisions.

83. The provisions of the Act are intended to strengthen the independence of the judiciary and enhance the effectiveness of the justice system.

84. After the Law was adopted, the Office of the President referred it to the Venice Commission of the Council of Europe for consideration, in order to ensure that it was in line with European standards and values.

85. On 20 and 21 March 2015, sitting in plenary, the Venice Commission adopted the Joint Opinion issued by the Venice Commission and the Human Rights Directorate of the Council of Europe Directorate General of Human Rights and Rule of Law on the Judicial System and Status of Judges Act and on amendments to the High Council of Justice of Ukraine Act.

86. On the whole, the Joint Opinion views the Judicial System and Status of Judges Act and the amendments to the High Council of Justice of Ukraine Act in a positive light. It does, however, note that there are some important issues to be resolved at the constitutional and legislative levels.

87. The Venice Commission and the Human Rights Directorate consider that constitutional provisions contain more serious problems affecting the independence of the judiciary than does the Judicial System and Status of Judges Act.

88. The Joint Opinion indicates that, for effective judicial reform bringing the judicial system in Ukraine into line with European standards, amendments need to be made to the Constitution. In particular, the Verkhovna Rada should lose its role in the appointment of judges for an indefinite term and in their dismissal; the composition of the High Council of Justice should be changed, in order to ensure that a substantial part, if not the majority, of its members are judges, elected by their peers; the role of the Verkhovna Rada in lifting judges' immunities should be eliminated; and the powers of the President to establish and abolish courts must be removed.

89. In paragraph 17 of its concluding observations, the Committee expresses particular concern with regard to reports of the politically motivated prosecution of a number of politicians, including the former Prime Minister, Yulia Vladimirovna Timoshenko. In this regard, it is for the State to ensure that prosecutions under article 365 of the Criminal Code fully comply with the requirements of the Covenant.

90. We would like to inform the Committee that, by its decision of 14 April 2014, the Supreme Court overturned the verdict of the Pechersk District Court of the city of Kyiv of 11 October 2011, the decision of the Criminal Division of the Kyiv Appeal Court of 23 December 2011 and the decision of the Criminal Division of the High Specialized Court for Civil and Criminal Cases of 29 August 2012 against Ms. Timoshenko and closed the criminal case against her under article 365(3) of the Criminal Code on the grounds that,

under article 6(1)(1) of the Code of Criminal Procedure of 1960, no crime had been committed.

91. Pursuant to Act No. 746-VII of 21 February 2014 on amendments to bring the Criminal Code and the Code of Criminal Procedure of Ukraine into line with the provisions of article 19 of the United Nations Convention against Corruption, article 365 of the Criminal Code has been amended to address the concerns raised in paragraph 17 of the Committee's concluding observations.